

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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|                           |   |                            |
|---------------------------|---|----------------------------|
| DENNIS P. CLARKE,         | ) |                            |
|                           | ) |                            |
| Appellant,                | ) | DOCKET NO.: PT-1997-12     |
|                           | ) |                            |
| -vs-                      | ) |                            |
|                           | ) |                            |
| THE DEPARTMENT OF REVENUE | ) | FACTUAL BACKGROUND,        |
| OF THE STATE OF MONTANA,  | ) | CONCLUSIONS OF LAW,        |
|                           | ) | ORDER and OPPORTUNITY      |
| Respondent.               | ) | <u>FOR JUDICIAL REVIEW</u> |

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The above-entitled appeal was heard on November 1, 1999, in the City of Great Falls, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The taxpayer, Dennis P. Clarke, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Pete Fontana, appraiser, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and a schedule for post-hearing submissions was established. The Board, having fully considered the testimony, exhibits, post-hearing submissions, and all things and matters presented to it by all parties, concludes as follows:

## FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The property which is the subject of this appeal is described as follows:

Land only described as a Lot 15, Block 2, Country Club Addition, Great Falls, County of Cascade, State of Montana. (Assessor Code - 688200).

3. For the 1997 tax year, the DOR appraised the subject land at a value of \$58,197.

4. The taxpayer appealed to the Cascade County Tax Appeal Board on September 29, 1997 requesting a reduction in value to \$15,000 for the land and \$100,000 for the improvements, stating:

*The value of the 1997 appraisal increased the value by \$61,900 or by 55%. This is an excessive figure that does not represent the market value of the property.*

5. In its October 22, 1997 decision, the county board adjusted the value of the improvements and denied the appeal on the land, stating:

*After hearing testimony and reviewing exhibits, the Board feels the grade of the house should be reduced from a "6" to a "6-" resulting in a 10% reduction in value. The new building value is \$104,493.00 with the land remaining at \$58,197.00.*

6. The taxpayer then appealed that decision to this Board on October 24, 1997, stating:

*The land value of \$58,197 does not reflect market value. I am only appealing this value, not the value of the building.*

7. The DOR did not appeal the local board's decision to modify the improvement value.

#### TAXPAYER'S CONTENTIONS

Mr. Clarke testified that a more appropriate market value for the subject lot would be in the range of \$21,000 to \$28,000.

Mr. Clarke takes issue with the DOR's determination of an artificially created neighborhood. The DOR has considered sales information outside the subject property's immediate neighborhood to value his property. The homes in the immediate area are older and more moderately priced in comparison compared to those properties along the Missouri River and Park Garden Road.

Taxpayer's Exhibit #1 is a copy of an appraisal performed by John and Laura Buck Appraisals. Page 5 of the exhibit states, in summary, "It is our opinion, given the data presented that the value for the home located 1529 Meadowlark Drive would be in the range of \$94,500 - \$132,200 considering adjusted values, or it would be in the range of \$90,000 - \$125,000, if only considering the actual sales prices of properties that were considered to be similar."

Taxpayer's Exhibit #2 is the DOR's "Montana Comparable Sales", that was presented at the local hearing. Mr. Clarke

takes issue with the land value portion of the exhibit, which illustrates the following:

| Property   | Subject    | Comp #1  | Comp #2  | Comp #3  | Comp #4  | Comp #5  |
|------------|------------|----------|----------|----------|----------|----------|
| Location   | 1529       | Park     | 2200     | Park     | 1744     | 506      |
|            | Meadowlark | Garden   | Alder    | Garden   | Alder    | Deer     |
| Land value | \$58,197   | \$18,788 | \$22,320 | \$18,788 | \$22,320 | \$17,328 |

The DOR's Computer Assisted Land Pricing (CALP) model for neighborhood 006D values land that fronts the Meadowlark Country Club golf course and the Missouri River. Mr. Clarke testified that five of the six sales have river frontage while only one is situated on a golf course. Mr. Clarke contends that the golf course sale is in a superior area, with homes far superior to the subject property.

Taxpayers' Exhibit #3 is a copy of the DOR's extracted land values. Mr. Clarke contends these properties are either outside the subject neighborhood or in a superior residential neighborhood.

Mr. Clarke testified that the 400 block of Park Garden Road has far superior properties than those located in the immediate vicinity of the subject property. Taxpayers' Exhibit #4 is a listing of a home located at 400 Park Garden Road with a list price of \$995,000.

Mr. Clarke testified that the DOR only recognized one vacant land sale that fronts the Meadowlark Country Club golf course, which sold for \$50,000. He contends that this lot was the last vacant parcel on the golf course, and, based on a

supply and demand relationship, it would suggest an inflated sale price.

Mr. Clarke disputes the DOR's analysis of extracted land values (exhibit 3). This analysis offers a false comparison of values, because the formula used by the DOR recognizes a time adjusted sale price, then deducts the depreciated cost of the improvements to arrive at a land value indication:

|  |             |
|--|-------------|
| <u>Example: Sale #1</u>                            |             |
| Sale Date - August 1992                            |             |
| Valuation Date - January 1, 1996                   |             |
| Time Adjustment: 40 months X .004% per month = 16% |             |
| Sale Price   | \$131,600   |
| Time Adjustment                                    | X 1.16%     |
| Time Adjusted Sale Price                           | \$152,656   |
| Less: Depreciated Cost of Imps.                    | (\$101,880) |
| Land Value Indication                              | \$ 50,776   |

The depreciated cost of the improvements is not the market value, and buyers do not purchase a property based on the depreciated cost of the improvements.

Mr. Clarke stated that properties across the street, not directly on the golf course, have land values in the range of \$22,000. There is nothing to suggest that being on the golf course would result in nearly tripling the land value. Being located on the golf course can have negative influences, i.e., lack of privacy and stray golf balls hitting your home.

#### DOR'S CONTENTIONS

DOR Exhibit B is a map illustrating the locations of the land sales used to establish the subject property's land value.

It is the opinion of the DOR that there is a relationship between properties that front a golf course and properties that have river frontage. Therefore, the Computer Assisted Land Pricing (CALP) model was constructed to reflect this assumption. DOR exhibit C is the CALP model that analyzes six vacant land sales. In pertinent part, Exhibit C, along with the testimony, illustrates the following:

CALP MODEL

Neighborhood 006D  
River and Golf Course Frontage

Base Size                      1  
Base Rate                      \$60,600  
Adjusted Rate                 \$3,100

| Sale # | Location       | Sale Date | Lot Size (acres) | Sale Price |
|--------|----------------|-----------|------------------|------------|
| #1     | River Frontage | 5/94      | 2.117            | \$72,500   |
| #2     | Golf Course    | 7/92      | .368             | \$50,000   |
| #3     | River Frontage | 5/93      | 2.030            | \$67,500   |
| #4     | River Frontage | 3/94      | 3.420            | \$62,500   |
| #5     | River Frontage | 12/93     | 3.420            | \$65,000   |
| #6     | River Frontage | 6/93      | 1.502            | \$68,000   |

Mr. Fontana testified that sale #3 is located within the city limits, with city water and sewer, and sales #1, #4, #5 and #6 are located outside the city limits and without city services.

Mr. Fontana testified "...we analyzed these sales and ran them against our particular statistical model we had, what happens is that you have a flat line (horizontal). It doesn't matter what the size of the property is, everybody will pay \$60,000 or \$70,000 for it, give or take few bucks. Which means they're buying a site value and that's why we determined that we

needed to use the sale on the golf course with the sales on the river, because we determined those are both positive influences that affect the value of the property. And so, I wouldn't feel as good about this model if there wouldn't have been a sale on the golf course, but there is...". "...what I'm saying is that we could have this third of an acre sale and we could have this four acre sale, so we have this flat line of just acreages. Then when you go to the Y axis and you say, what's the sale price, well, low and behold, they're all the same. People are buying this site amenity..."(Pete Fontana testimony, State Tax Appeal Board hearing, November 1, 1999).

The CALP model indicates a base size of one acre, which was a determination made by the DOR staff member person created the model. Mr. Fontana testified "...we decided that one acre would be sufficient to build a house on, so we chose the one acre. So it regressed the model based on one acre..." (Pete Fontana testimony, State Tax Appeal Board hearing, November 1, 1999).

Mr. Fontana indicated that the typical lot size in the Country Club area ranges from 10,000 square feet to 20,000 square feet. He stated that this is a unique neighborhood with properties that front the Missouri River and Meadowlark Country Club golf course or both. To show support for the CALP model, the DOR constructed an extracted land value model (exhibit #3). The properties illustrated on this exhibit are properties that

have sold. Summarized and in pertinent part, Exhibit #3 illustrates the following:

**MEADOWLARK COUNTRY CLUB SALES  
(ON GOLF COURSE):**

| Property Address   | Sale Date | Sale Price       | Time Adj Sale Price | Depreciated Cost Imps Only | Sale Price Less Dep Imps or Land Value | DOR 97 Reappraisal Value |
|--------------------|-----------|------------------|---------------------|----------------------------|--|--------------------------|
| 427 Riverview Ct   | Aug 92    | \$131,600        | \$152,656           | \$101,880                  | \$50,776                               | \$156,100                |
| 1509 Meadowlark Dr | Feb 94    | \$120,000        | \$130,560           | \$87,600                   | \$42,960                               | \$128,000                |
| 1509 Meadowlark Dr | Sep 96    | \$125,000        | \$130,560           | \$87,600                   | \$42,960                               | \$128,000                |
| 1541 Meadowlark Dr | Nov 94    | \$169,000        | \$178,734           | \$126,230                  | \$52,504                               | \$165,100                |
| 439 Park Garden Rd | Oct 94    | \$220,000        | \$232,320           | \$174,250                  | \$58,070                               | \$230,500                |
| 437 Park Garden Rd | Aug 93    | \$230,000        | \$255,760           | \$189,210                  | \$66,550                               | \$243,300                |
| 437 Park Garden Rd | Feb 97    | \$295,000        | \$255,760           | \$189,210                  | \$66,550                               | \$243,000                |
| <b>AVERGES</b>     |           | <b>\$184,500</b> | <b>\$190,907</b>    | <b>\$136,568</b>           | <b>\$54,338</b>                        | <b>\$189,650</b>         |

**SUBJECT PROPERTY**

| Property Address   | 1997 Mkt Value | Depreciated Cost Imps | Mkt Vale less Dep Imps or Land Value |
|--------------------|----------------|-----------------------|--------------------------------------|
| 1529 Meadowlark Dr | \$174,300      | \$113,200             | \$61,100                             |

NOTE: The time adjustment used = 4.8% per year or .0040% per month up to the base of 1/1/96.

Rate calculation for golf course land = \$1.39 per sq. ft. for the first 43,560 SF and a \$.07 per sq. ft. adj for any size above or below the base size of 43,560 SF.

**EXAMPLE Demonstrated on the subject @ 9,216 Square Feet.**

|                                |                   |
|--------------------------------|-------------------|
| Base Size                      | 43,600            |
| Base Rate                      | \$1.39            |
| Total Base Rate                | \$60,604          |
| Diff actual/base size          | 34384             |
| Adjustment Rate                | \$0.07            |
| Actual Adjustment              | \$2,407 (\$2,407) |
| <b>TOTAL MKT VALUE OF LAND</b> | <b>\$58,197</b>   |

Mr. Fontana concurs with the taxpayer's testimony that the residential properties located along Park Garden Road are superior or more desirable than those along Meadowlark Drive. This is made evident on Exhibit #3 with those properties on Park Garden Road having an "excellent" condition/desirability/utility (CDU) determination versus a "good" CDU for those properties



along Meadowlark Drive.

Mr. Fontana indicated that paired sales were analyzed, the same property selling more than once. These sales were used to determine that properties were increasing at a rate of 4.8% per year or .004% per month (Exhibit #3; 1509 Meadowlark Dr. & 437 Park Garden Rd). The sale prices for the properties illustrated in aforementioned table were adjusted to a base year date of January 1, 1996.

Mr. Fontana emphasized that land extraction is a valid appraisal methodology in determining land values.

DOR Exhibit D is a copy of the DOR's "Sales Verification Form" for the property located at 427 Riverview Court, a golf course property (Exhibit #3). The emphasis on this exhibit is that the buyer completed this form and answered question B, attributing \$60,000 of the total purchase price to the value of the land. Mr. Fontana contends this document offers additional support for the DOR's land value determination for the subject property.

DOR Exhibit E is a copy of a fee appraisal for the property located at 437 Park Garden Road, a golf course property (Exhibit #3). The appraiser and author of the exhibit estimated a land value of \$60,000.

DOR Exhibit F is a copy of an article from "The Appraisal Journal, July 1997, titled, *Adjusting the Value of Houses*

*Located on a Golf Course"*. The portion of the exhibit the DOR emphasized is:

"...They benefit even if they are not golfers because their view is both natural and unobstructed, as opposed to the restricted suburban property view of a solid fence or a neighbor's back yard. Second, these residents may also associate their golf course view with the desirable feature of low population density. Third, residents of golf course houses may feel a greater amount of privacy because of the open space and attractiveness of a golf course landscape..."

#### BOARD'S DISCUSSION

**ARM 42.18.109 (6)** states *"Residential lots and tracts are valued through the use of computer assisted land pricing (CALP) models. Homogeneous areas within each county are geographically defined as neighborhoods..."*

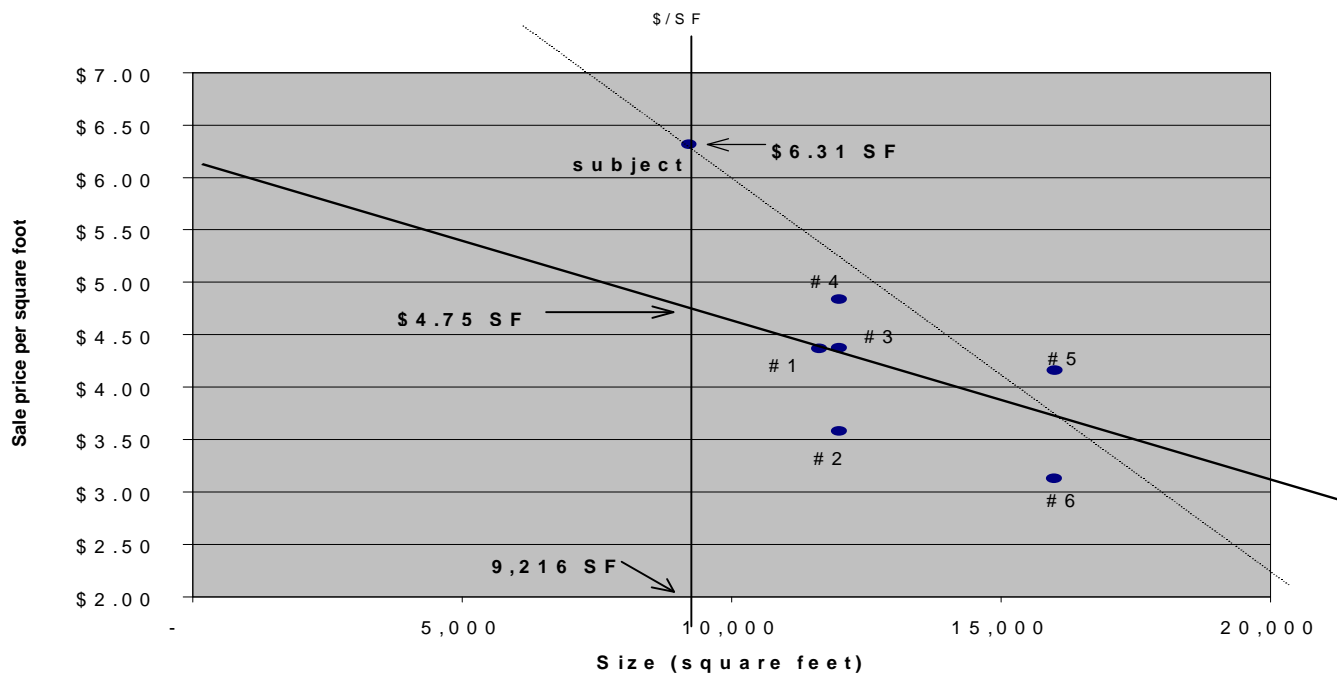
Webster's Dictionary defines homogeneous as: "of the same kind or nature; essentially alike."

It is the opinion of the Board that properties with river frontage are not homogeneous to the subject property. Four of the six sales on Exhibit C are located outside the city limits and are not impacted by the same sanitary conditions, i.e. sewer, water etc. Those properties located outside the city limits require more land area to meet the proper regulations for septic, well and drain field. In addition, the five river front sales are significantly larger than the subject property, ranging from 1.502 acres to 3.42 acres. The subject property on consists of .21 of an acre.

Mr. Fontana testified that the sale price per square foot

is not considered all that significant; a potential buyer is looking for a building site, irrespective of size. The following table and graph are presented to illustrate that a relationship does exist with the size and sale price.

| Extracted Land Sales - Exhibit #3 |                                  |            |                |        |
|-----------------------------------|----------------------------------|------------|----------------|--------|
| Location                          | Depreciated Cost of Improvements | Land Value | Land Area - SF | \$/SF  |
| #1 427 Riverview Ct.              | \$101,880                        | \$50,776   | 11,633         | \$4.36 |
| #2 1509 Meadowlark DR.            | \$87,600                         | \$42,960   | 12,000         | \$3.58 |
| #3 1541 Meadowlark Dr.            | \$126,230                        | \$52,504   | 12,000         | \$4.38 |
| #4 439 Park Garden Rd.            | \$174,250                        | \$58,070   | 12,000         | \$4.84 |
| #5 437 Park Garden Rd.            | \$189,210                        | \$66,550   | 16,000         | \$4.16 |
| #6 Golf Course Sale - Exhibit C   |                                  |            |                |        |
| Sale Price                        | Land Area - SF                   | \$/SF      |                |        |
| \$50,000                          | 15,987                           | \$3.13     |                |        |



Based on the graph, the subject property's value should

fall in the price range of \$4.75 per square foot (solid line). The dotted line suggests where the sales should fall to support the DOR's land value determination. The Board disputes the DOR's position that the value or price of a lot is not affected by its size, and this is evident from the extracted sales as presented in the aforementioned graph.

The Board agrees with the DOR that using land extraction is proper appraisal methodology, but careful consideration must be made when determining the amount of total accrued depreciation and if the property has been remodeled.

The DOR is in agreement with the taxpayer that the developed properties along Park Garden Road, as illustrated on Exhibit #3, are superior to those in the immediate area of the subject property. Nothing was presented to the Board to suggest a wide variance in land values.

It is the Board's opinion, that the value of the subject property is \$4.75 per square foot or \$43,776.

#### CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301 MCA.**

2. **§15-8-111, MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. 15-2-301, MCA, Appeal of county tax appeal board decisions. (4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.

4. The appeal of the taxpayer is hereby granted in part and denied in part and the decision of the Cascade County Tax Appeal Board is modified.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Cascade County by the Assessor of that county at the 1997 tax year value of \$43,776. The appeal of the taxpayer is therefore granted in part and denied in part and the decision of the Cascade County Tax Appeal Board is modified.

Dated this 9<sup>th</sup> of December, 1999.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

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GREGORY A. THORNQUIST, Chairman

( S E A L )

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JAN BROWN, Member

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JEREANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of December, 1999, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Dennis P. Clarke  
1529 Meadowlark Drive  
Great Falls, Montana 59403

Office of Legal Affairs  
Department of Revenue  
Mitchell Building  
Helena, Montana 59620

Appraisal Office  
Cascade County  
300 Central Avenue  
Suite 520  
Great Falls, Montana 59401

Nick Lazanas  
Cascade County Tax Appeal Board  
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Paralegal